LIBRARY
SUPREME COURT, U. S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 30

KEITH MARTIN, APPELLANT,

vs.

HERBERT WALTON, AS PROBATE JUDGE OF JOHNSON COUNTY, KANSAS.

APPEAL FROM THE SUPREME COURT OF THE STATE OF KANSAS

FILED JANUARY 7, 1961
PROBABLE JURISDICTION NOTED MARCH 27, 1961

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 635

KEITH MARTIN, APPELLANT,

vs.

HERBERT WALTON, AS PROBATE JUDGE OF JOHNSON COUNTY, KANSAS.

APPEAL FROM THE SUPREME COURT OF THE STATE OF KANSAS

INDEX

	Original	Print
Proceedings in the Supreme Court of the State of Kansas		
Abstract of record from the District Court of Johnson County, Kansas	1	1
Statement	1	1
Petition for writ of mandamus	2	2
Amended Supreme Court Rules 41 and 54 effective December 15, 1958	8	6
Alternative writ of mandamus	10	8
Order of continuance	11	9
Application to intervene as amicus curiae	11	9
Order by Earl E. O'Connor, District Judge, giving Johnson County Bar Association leave to enter appearance as amicus curiae	12	9
Motion to quash alternative writ of mandamus	12	9
Hearing on motion to quash	12	10
Opinion of the court after oral arguments	14	11

RECORD PRESS, PRINTERS, NEW YORK, N. Y., MAY 23, 1961

	Original	Print
Abstract of record from the District Court of Johnson County, Kansas—Continued		
Stipulation	16	13
Journal entry	17	13
Notice of appeal	17	13
Certificate	18	14
Specification of error	19	14
Motion to stay judgment of district court and order denying	20	15
Opinion, Fatzer, J.	26	19
Notice of appeal to the Supreme Court	40	33
Clerk's certificate (omitted in printing)	43	34
Order noting probable jurisdiction	44	34
Order of substitution	45	35

[fol. 1]

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 42,026

Keith Martin, Appellant,

vs.

Joseph S. Davis as Probate Judge of Johnson County, Kansas, Appellee.

Appeal from the District Court of Johnson County, Kansas.

Honorable Earl E. O'Connor, Judge, Division One.

Abstract of Appellant From the District Court of Johnson County, Kansas

Statement

This is an appeal which involves the constitutionality of amended Supreme Court Rules, 41 and 54, promulgated on December 15, 1958.

The Appellant is a Kansas resident and was licensed to practice law before the Kansas Supreme Court and all inferior courts of Kansas on February 12, 1948.

[fol. 2] The appeal is from an order quashing an alternative writ of mandamus which writ allowed the appellant to practice law in the Probate Court of Johnson County, Kansas, without local counsel and without regard to amended Rules 41 and 54 of the Kansas Supreme Court.

The Pleadings

In the District Court of Johnson County, Kansas

No. 42,026

Keith Martin, Plaintiff,

vs.

Joseph S. Davis, as Probate Judge of Johnson County, Kansas, Defendant.

Petition for Writ of Mandamus—Filed February 29, 1960

Comes now the plaintiff and moves the Court for an order directing the Clerk to issue a writ of mandamus against the defendant, and as reasons therefor respectfully states:

1. The defendant is Probate Judge of Johnson County, Kansas, and may be served with process in said court at Olathe, Kansas.

2. Plaintiff is a duly licensed lawyer of the State of Kansas and was admitted to practice before the Kansas Supreme Court and all inferior courts on February 12, 1948; he resides at 6200 West 61st Street in the City of [fol. 3] Mission, Johnson County, Kansas. Prior to his admission he attended the public schools of Miami County, Kansas, and received his A.B. (1942) and LL.B. (1947) degrees from the University of Kansas, and was elected to Phi Beta Kappa and Order of the Coif. He graduated from the Harvard Business School in September, 1946, with an M.B.A. degree. In 1943-45 he resided in Kansas City, Missouri, and was employed by the Pratt & Whitney Aircraft Corporation and attended night law school at the University of Kansas City. While attending Kansas University Law School in 1945-46 and 1946-47, he taught economics at Kansas University.

3. Plaintiff was duly licensed to practice law in Missouri on August 2, 1947, and has since practiced law in

Missouri. He now maintains an office in the Bryant Building, Kansas City, Jackson County, Missouri.

4. He has also practiced law in Kansas, since April, 1948, and has continuously maintained an office in Mission, Kansas, since said date. He has been City Attorney of Mission, Kansas, since 1951, and is a member of the State Board of Tax Appeals of Kansas. He has represented the State of Kansas in highway litigation in the Kansas courts. He has authored an article on Kansas procedure in the Third Survey of Kansas Law, 6 Kan. L. Rev. 134 (1957).

5. Plaintiff states that Jackson County, Missouri, and Johnson County, Kansas, in which he maintains his two offices, are contiguous counties; that Wyandotte County, Kansas, is contiguous to each of the foregoing counties. [fol. 4] The three counties are part of one metropolitan area and have a population of about one million.

6. Plaintiff states that his clients frequently live in one county and either work or have business connections in another county and state. Their problems involve the laws and procedures of both states.

7. He states that his knowledge of the laws and procedures and his ability to practice in either state have been of assistance to him in obtaining clients and in being able to give them counsel and court representation. He is in the general practice of law. Since his admission to practice, he has tried as many litigated matters in Kansas as in Missouri; he has been and is a member of the state and local bar associations of Kansas and Missouri, has tried cases in the federal courts of each state, and has argued cases in the appellate courts of Kansas, Missouri, and the United States Courts of Appeals for the Eighth and Tenth Circuits.

8. Plaintiff states that he consults with as many clients in his Kansas office or home as in his Missouri office, although most of his office work is performed in his Missouri office.

9. Keith Martin informs the Court that his net income from law practice exceeds $15,000 per year and that ap-

proximately one-half of that sum has been earned from Kansas practice and has been so reported on his state income tax returns. He further states that a large proportion of his income is derived from court appearances including adoptions and the probate of estates of which the defendant's court has jurisdiction.

[fol. 5] 10. On December 15, 1958, the Supreme Court of Kansas entered and passed amended Rules 41 and 54, which are vague, arbitrary, and without standards, and have caused plaintiff's Kansas license to be in fact a nullity so long as plaintiff practices law "regularly" in Missouri; that said amended Rules are herewith attached and made a part of this petition.

11. Subsequent to the promulgation of said amended Rules 41 and 54, and the decision of *Taylor* v. *Taylor*, 185 Kan. 324, 342 P.2d 190, involving plaintiff herein, the defendant has not allowed plaintiff to appear and try cases in the Probate Court of Johnson County, Kansas, unless he has the appearance and association of local counsel, whereas from February 12, 1948, to December 15, 1958, plaintiff regularly appeared for clients in the Probate Court of Johnson County, Kansas, without local counsel. Defendant has informed plaintiff that in the future he cannot appear as attorney for clients without the appearance and association of local counsel as required by amended Rules 41 and 54.

12. He states that local counsel, according to the minimum fee schedules of the Johnson and Wyandotte County, Kansas, Bar Associations, require compensation of approximately one-third to one-half of the fee for serving as local counsel; that said amended Rules 41 and 54 require plaintiff to share his income with local counsel who frequently are not acquainted with the case in issue and who are nevertheless required to be in court by defendant.

[fol. 6] 13. Plaintiff states that the application of amended Rules 41 and 54 not only deprive him of part of his income from his Kansas practice but also discourage clients from seeking his services. Because he cannot represent clients in Kansas courts without the compulsory presence of an-

other lawyer, clients come to believe that he cannot counsel them regarding Kansas law or represent them in Kansas courts.

14. That said amended Rules place plaintiff in the category of a foreign attorney, pursuant to G.S. 1949, 7-104, and render his Kansas license inoperative so long as he "regularly" practices in Missouri, unless he has another Kansas lawyer associated and appearing with him.

15. He has continuously listed and maintained phones at both offices and at his residence. Since 1948, Kansas lawyers have obtained service of pleadings upon him by mailing them to his Kansas office or residence or by leaving them at either place.

16. That said amended Rules 41 and 54 of December 15, 1958, as applied to plaintiff, violate the Fourteenth Amendment of the United States Constitution, and in particular, the Due Process and Equal Protection Clauses.

17. Plaintiff further states that if the amended Rules are based upon G.S. 1949, 7-104, then said statute, as applied to plaintiff, is also violative of Fourteenth Amendment due process and equal protection as guaranteed by the United States Constitution.

18. That unless the defendant allows plaintiff to appear before him in all present cases which plaintiff has [fol. 7] pending in his court and in all future cases without the appearance and association of local counsel, pursuant to the amended Rules 41 and 54, he will lose clients and a substantial part of his income and he will be deprived of his right to practice his profession in the court of the defendant, as granted to him by the Kansas Supreme Court; that his Kansas license granted him the right to appear in the Kansas Supreme Court and all inferior courts, which includes the court presided over by defendant.

19. Plaintiff has no adequate, plain and complete remedy at law, and as a matter of right he is entitled to file cases in the Probate Court of Johnson County, Kansas, and to try them without the appearance and association of local counsel because of the license granted to him by the Su-

preme Court of Kansas in 1948, and the defendant has a duty to allow plaintiff to appear and try cases in the Probate Court without local counsel. He has suffered and will suffer irreparable injury if this Court does not make an order directing the defendant to permit plaintiff to file and try lawsuits without the appearance and association of local counsel.

Wherefore, plaintiff prays this honorable Court to issue against the defendant a writ of mandamus commanding him to permit plaintiff to file cases in the Probate Court of Johnson County, Kansas, and to permit plaintiff to appear and try said cases without the appearance or association of local counsel and without regard to amended Rules 41 and 54 and G.S. 1949, 7-104, and in accordance with the license granted to him by the Kansas Supreme Court on February 12, 1948, and to declare amended Rules [fol. 8] 41 and 54 and G.S. 1949, 7-104, to be in violation of the Fourteenth Amendment of the United States Constitution as applied to plaintiff herein.

Payne, Jones & Payne, By Howard E. Payne, 122 East Park, Olathe, Kansas, Attorneys for Plaintiff.

AMENDED SUPREME COURT RULES 41 AND 54
EFFECTIVE DECEMBER 15, 1958

Rule No. 41. Admission to Practice. As soon as practicable after the completion of an examination, the board shall file a report with the clerk of the court recommending the granting of the denial of the petition of the applicant. Whenever such report shall recommend the granting of a petition, unless some reason shall appear to the contrary, the court will make an order admitting the applicant to practice in all the courts of the state, which order shall become effective upon his taking an oath in open court, the form of which shall be in substance as follows:

> You do solemnly swear that you will support and bear true allegiance to the constitution of the United States and the constitution of the State of Kansas; that you will neither delay nor deny any man his right through malice, for lucre, or from any unworthy desire;

that you will not knowingly foster or promote, or give your assent to any fraudulent, groundless or unjust suit; that you will neither do, nor consent to the doing of, any falsehood in court; and that you will discharge your duties as an attorney and counselor of the Supreme Court and all inferior courts of the state of [fol. 9] Kansas with fidelity both to the court and to your cause, and to the best of your knowledge and ability, So help you, God.

Upon the making of such order the clerk shall issue to such applicant a certificate of his authority to practice law in this and all inferior courts of the state, upon his signing his name on the roll of attorneys of this court. Whenever the board shall recommend a denial of the petition, an order will be made to that effect.

Provided further however, The authority granted to practice law shall not be exercised except as provided under Rule No. 54, *infra*, when the licensee herein has been admitted to the Bar of another state or territory and is regularly engaged in the practice of law in such other state or territory.

Rule No. 54. An attorney regularly practicing outside of this state and in good standing as a member of the bar of the place of his regular practice may be recognized as an attorney by the courts, commissions, and agencies of this state, for any action or proceeding, but only if he has associated with him as attorney of the record in such action or proceeding a member of the Bar of this state qualified under the provisions of G.S. 1949, 7-104, upon whom service may be had in all matters connected with such action or proceeding proper to be served upon an attorney of record.

(Petition was verified by plaintiff as required by law.)

[fol. 10]

ALTERNATIVE WRIT OF MANDAMUS

The State of Kansas to Joseph S. Davis:

Whereas, it appears to this Court by the verified petition of plaintiff, Keith Martin, on file in the office of the Clerk of the District Court that plaintiff was admitted to the practice of law before the Supreme Court of Kansas and all inferior courts on February 12, 1948, and that he is a resident of Kansas, and

Whereas, it appears that the defendant is probate judge of Johnson County, Kansas, and

Whereas, it appears that the defendant requires plaintiff to have the appearance and association of another Kansas lawyer whenever plaintiff appears in the court of the defendant to file or try cases:

Now, therefore, in order that full and speedy justice shall be done in behalf of petitioner Keith Martin, you, Joseph S. Davis, as probate judge of Johnson County, Kansas, are hereby commanded and enjoined upon receipt of this writ, to allow and permit Keith Martin to proceed in your court to try and file cases without the appearance or association of another Kansas lawyer in all cases which he has pending in your court and in all cases which he may file or try hereafter, or in the alternative you are required to appear and show cause to the contrary before this Court on March 1, 1960, at 9:30 o'clock A. M., or as soon thereafter as said matter may be heard.

[fol. 11] Hereof fail not at your peril, and have you then and there this writ, and make due return of your execution of the same.

Betty West, Clerk of the District Court, Johnson County, Kansas.

(Seal)

The above writ allowed this 29 day of February, 1960. The defendant is hereby directed to do the things therein

specified, or appear and show cause to the contrary, as stated in said writ.

Earl E. O'Connor, Judge of the District Court, Johnson County, Kansas, Division No. One.

(Service of process was made on defendant on February 29, 1960.)

ORDER OF CONTINUANCE

On March 1, 1960, the above entitled matter was continued by agreement until March 4, 1960, at 9 o'clock a. m.

APPLICATION TO INTERVENE AS AMICUS CURIAE—
Filed March 3, 1960

Comes now the Johnson County Bar Association and asks leave of Court to be permitted to file such pleadings as to it may deem proper herein and in support thereof states that questions appear to be raised in this proceeding which are of interest and concern to the Johnson County Bar Association and that its appearance as *Amicus* [fol. 12] *Curiae* it is hoped will aid the Court in determination of the questions in this action.

Johnson County Bar Association by Committee on Unauthorized Practice, By Roy S. Lowe.

ORDER BY EARL E. O'CONNOR, DISTRICT JUDGE—
Filed March 3, 1960

Johnson County Bar Association given leave to enter appearance as *Amicus Curiae*.

MOTION TO QUASH ALTERNATIVE WRIT OF MANDAMUS—
Filed March 3, 1960

Comes now the defendant and moves the Court for an order quashing the alternative writ of mandamus issued herein for the reason that neither said writ nor the peti-

-tion therefor state facts showing that plaintiff is entitled to such writ.

John J. Gardner, As County Attorney and Attorney for Defendant.

Hearing on Motion to Quash—Filed March 4, 1960

The Court: This is Case 26739, Martin versus Joseph S. Davis, as Probate Judge of Johnson County, Kansas.

The record shows that on February 29, 1960, a petition was filed by the plaintiff. The Court at that time issued an alternative writ of mandamus and hearing was set for 9:30 on March 1. That same day, at the defendant's request, the matter was continued to this morning. [fol. 13] On March 3 an application was presented by the Johnson County Bar Association to enter the case as *amicus curiae* and the Court at that time gave the Association leave to enter appearance as *amicus curiae* and to do any further acts that would aid the Court of course either on leave of the Court or at the Court's request in determining the matter. And I see that yesterday a motion to quash was filed by the defendant.

For the record we ought to get some appearances in here at this time.

Mr. Gardner: John J. Gardner appears for the defendant, Joseph S. Davis, as Probate Judge of Johnson County, and I am appearing as County Attorney for the county representing a county officer.

Mr. Payne: If the Court please, Howard E. Payne, Olathe, appearing for the plaintiff, Keith Martin.

Mr. Alden: If it please the Court, I am Bernhard W. Alden, Kansas City, Kansas. I am the chairman of the Committee on Unauthorized Practices of the Wyandotte County Bar Association and I have been requested by Mr. Willard Phillips, the president of the Wyandotte County Bar Association, to be present this morning representing that association in an unofficial capacity in that I am not requested to formally make application to enter the case as *amicus curiae;* however, I would like the record to show that I have offered the assistance of the Committee on Unauthorized Practices to Mr. Gardner. If there is any

assistance that we may give him in this case, we stand ready and anxious to do so.

The Court: You are not asking leave as such, though, to enter the case as *amicus curiae?*

[fol. 14] Mr. Alden: Not at this time, your Honor.

The Court: Mr. Lowe, do you want to make your appearance as far as the Johnson County Bar Association is concerned?

Mr. Lowe: Yes: that is all: as Committee on Unauthorized Practice.

The Court: And are you on that committee, Mr. Hackler?

Mr. Hackler: Yes.

The Court: Are the parties as such then ready to present and hear the motion to quash?

Mr. Payne: Plaintiff is ready, your Honor.

Mr. Gardner: Defendant is ready, your Honor.

The Court: You may proceed, Mr. Gardner.

Thereupon arguments were had and the appellee moved to quash the writ for three reasons: first, no instance of specific refusal was pleaded by plaintiff; second, the probate judge had to follow amended Supreme Court Rules 41 and 54, which are a plain mandate; third, the plaintiff was involved in *Taylor* v. *Taylor*, 185 Kan. 324, and raised the same issues which were decided adversely to him and the issues were therefore *res judicata*.

The appellant, by his attorney, urged, along with other contentions, that the amended rules were vague, arbitrary, and without standards and violated plaintiff's rights as guaranteed to him by the United States Constitution.

Opinion of the Court After Oral Arguments

The Court: Very well. I might say frankly that the first point that the Court was concerned with was that that [fol. 15] was raised by the defendant, and I was unable to find very much law that would be squarely on that point, namely, whether or not this had to refer to a specific proceeding that was pending or about to be filed or attempted to be filed before the defendant.

There is an old case, in 40 Kan. 469, which briefly I think may give some basis to the idea that it does not have to refer to a specific case. In that case a district judge

had found an attorney in contempt of court. He not only fined him and gave him a jail sentence, he also forbade him to practice until he purged him of contempt. In other words, he just couldn't practice before that district judge until he purged himself. And the attorney then brought a direct proceeding of mandamus in the Supreme Court, and whether or not the issue was squarely raised, at least the Court went ahead and granted the writ, and of course it was just a general prohibition by the district judge. It didn't refer just to that case, as I understand; it was just generally that that attorney was not permitted to practice before this district court. Using that case as some basis, the Court in this case does not wish to predicate its decision on that point.

Of course, this motion to quash the alternative writ of mandamus is tantamount to a demurrer so far as ruling on the same is concerned. The Court finds that the facts that are set forth in the petition are substantially the same as those that were presented to the Supreme Court in *Taylor* v. *Taylor*, 185 Kan. 324.

While many of these facts that are contained in the petition are probably redundant and irrelevant to the real [fol. 16] issue involved—and I believe the Supreme Court even used that language in the Taylor case—the important fact is that the petition shows on its face that the plaintiff is a member of the Missouri Bar and regularly practices in that state, which squarely places him within the purview of Rules 41 and 54 of the Supreme Court of Kansas.

The real issue that is presented in this petition was presented and decided adversely in the Taylor case, that is, adversely to the plaintiff, including the constitutional matters that are raised in this petition.

By reason of that decision, plainly under the facts that are alleged in this petition, there is no clear-cut duty on the part of the defendant to permit the plaintiff to practice before his court without compliance with Rules 41 and 54 of the Supreme Court of Kansas. The Court feels that the Taylor case is controlling.

For that reason, the motion to quash the alternative writ is sustained and the matter is dismissed at the plaintiff's costs.

STIPULATION

Mr. Payne: Would your Honor also state into the record that Keith Martin, who is the plaintiff in this case, is the same Keith Martin, attorney, who was involved in the case of Taylor v. Taylor? We can agree that that is so?

The Court: Do you allege it in there? Of course, I am just passing now on the petition—

Mr. Davis: It is alleged in the petition.

The Court: It is alleged in there. I think that is sufficient. I doubt if anyone is going to quarrel over that.

Mr. Gardner: I don't see any objection to that.

[fol. 17] JOURNAL ENTRY

On this fourth day of March, 1960, the motion of the defendant to quash the alternative writ of mandamus comes on regularly for hearing. The parties appear in person and by their attorneys of record. Roy S. Lowe appears for the Committee on Unauthorized Practice of the Johnson County Bar Association as *amicus curiae*. Bernhard W. Alden is present for the Wyandotte County Bar Association.

Thereupon, arguments are heard by counsel of record and the court, after having duly considered the same, finds that the motion to quash should be sustained.

It Is, Therefore, Ordered that defendant's motion to quash the alternative writ of mandamus be and the same is hereby sustained and the plaintiff's petition and alternative writ is dismissed and the costs are assessed against plaintiff.

Earl E. O'Connor, District Judge.

NOTICE OF APPEAL

To Joseph S. Davis, As Probate Judge of Johnson County, Kansas, and His Attorney of Record, John Gardner:

Take notice that the plaintiff, Keith Martin, does appeal and has appealed from the following order made in the above entitled action by the trial court to the Supreme Court of Kansas:

[fol. 18] The order of March 4, 1960, sustaining defendant's motion to quash alternative writ of mandamus.

Payne, Jones and Payne, By Howard E. Payne, 122 East Park, Olathe, Kansas, Attorneys for Plaintiff.

Service of the above notice of appeal accepted and proof of service waived this 4th day of March, 1960.

John J. Gardner, Attorney for Defendant, Roy S. Lowe, Chairman, Committee on Unauthorized Practice, Johnson County Bar Association appearing as *Amicus Curiae*.

Transcript was filed by appellant with clerk of the District Court on March 7, 1960.

CERTIFICATE

The foregoing is a true and correct abstract of the record in the above entitled case.

[fol. 19] SPECIFICATION OF ERROR

The trial court erred in sustaining the motion to quash the alternative writ. The amended Supreme Court rules 41 and 54 and G.S. 1949, 7-104, are in violation of the Fourteenth Amendment of the United States Constitution as applied to appellant.

Howard E. Payne, W. C. Jones, H. Thomas Payne, Attorneys for Appellant.

[fol. 20]

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 42,026

KEITH MARTIN, Appellant,

vs.

JOSEPH S. DAVIS as Probate Judge of Johnson County, Kansas, Appellee.

MOTION TO STAY JUDGMENT OF DISTRICT COURT

Comes now appellant and moves the court for an order staying the judgment of the Johnson County District Court, and states as follows:

1. That on March 4, 1960, the District Court of Johnson County, Kansas, entered an order which requires appellant to have the association and appearance of another lawyer when appellant is representing clients in the District or Probate Court.

2. Appellant has regularly practiced in said courts from February 12, 1948, the date of his admission to the Kansas Bar, to the present time.

3. He incorporates herein by reference all of the facts as set forth in the abstract heretofore filed with this court.

4. On May 12, 1960, this court set this cause for hearing and appellant expressly waived oral argument because the issues are similar to those heretofore decided in Taylor vs. Taylor, 185 Kan. 324, and the lawyers for the appellee and amicus curiae did not appear for argument.

5. On May 12, 1960, this court entered an order continuing said cause.

6. That the practical effect of the order of the District Court of Johnson County, Kansas, is that it takes away appellant's Kansas license for the sole reason that he also practices law in Missouri. The order of the District Court

[fol. 21] of Johnson County, Kansas, has deprived appellant of his right to earn a livelihood as a Kansas lawyer and has deprived him of his right to engage in his profession as a Kansas lawyer. The order is, therefore, a deprivation of appellant's rights as guaranteed by the Due Process and Equal Protection clauses of the Fourteenth Amendment of the United States Constitution.

7. It is respectfully submitted that in view of the serious consequences of the lower court's order, the appellant is entitled to an order from this court staying the judgment of the District Court of Johnson County, Kansas, until said cause can be finally determined by this appeal. It is further submitted that such a stay order is in keeping with the tradition of this court which has always stayed the judgments of inferior courts when said judgments have deprived a litigant of his basic rights or freedoms.

Respectfully submitted,

Payne, Jones & Payne, By Howard E. Payne, 122 East Park, Olathe, Kansas, Attorneys for Appellant.

Affidavit of Service (omitted in printing).

[fol. 22]

In the Supreme Court of the State of Kansas

Minute Entry of Order Denying Motion for Stay of Judgment of District Court—June 3, 1960

Motion by Appellant for stay of judgment of district court is Denied.

[fol. 23]

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 42,026

KEITH MARTIN, Appellant,

v.

JOSEPH S. DAVIS as Probate Judge of Johnson County, Kansas, Appellee.

SYLLABUS BY THE COURT

1. Under Article 3, Section 1 of the Constitution of Kansas the supreme court stands at the head of the judicial department and is invested with inherent power arising from its creation, or from the fact that it is a court, which power is essential to its being and dignity, and does not require an express grant to confer it.

2. Inherent power is not an arbitrary and despotic power to be exercised at the pleasure of the court, or because of passion, prejudice, or personal hostility; rather, it is one to be used with moderation and caution in the exercise of sound judicial discretion.

3. The practice of the law is so intimately connected and bound up with the exercise of judicial power in the administration of justice that the right to regulate the practice naturally and logically belongs to the judicial department of the government.

4. Under Article 3, Section 1 of the Constitution of Kansas, the supreme court has the inherent power to prescribe conditions for admission to the Bar, to define, supervise, regulate and control the practice of law, whether in [fol. 24] or out of court, and statutory regulations are effective and directory only when they accord with the inherent power of the judiciary.

5. The supreme court's legitimate concern for maintaining high standards for the practice of the law and the ad-

ministration of justice extends beyond the initial licensing of attorneys and, when admitted to the Bar, they are amenable to the rules and discipline of the court in all matters of order and procedure and to the continuing supervision and control of the practice of the law not in conflict with the federal and state constitutions.

6. No final judgment results when the supreme court admits an applicant to the Bar of the state of Kansas; a license or privilege is merely conferred upon the applicant to engage in the practice of law subject to the conditions prescribed in paragraph 5 of the syllabus.

7. While the police power is generally considered an exclusive power of the legislature, it may be exercised by courts.

8. Rules 41 and 54 of the supreme court, amended December 15, 1958, providing in substance that an attorney admitted to the Bar of Kansas who has been admitted to the Bar of another state and who is regularly engaged in the practice of law in that state shall associate local counsel before he can appear in the courts or before boards or commissions of Kansas, were adopted to serve the public policy of the state in all phases of actions, hearings and proceedings where the applicant or litigant is represented by a Kansas licensed attorney who is regularly engaged in the practice of law in another state.

9. Rules referred to in paragraph 8 of the syllabus are [fol. 25] examined, and it is *held*: The rules are a proper and valid exercise of the inherent power of the supreme court to regulate, supervise and control the practice of law before the courts of the state, and, as applied to the appellant, they do not deny him due process of the law or the equal protection of the law in violation of the Fourteenth Amendment to the Constitution of the United States, as more fully set forth in the opinion.

Appeal from Johnson district court, division No. 1; Earl E. O'Connor, judge. Opinion filed December 10, 1960. Affirmed.

Keith Martin, of Kansas City, Missouri, and Mission, Kansas, argued the cause *pro se*, and *Howard E. Payne*, *W. C. Jones* and *H. Thomas Payne*, of Olathe, were with him on the briefs for appellant.

John J. Gardner, County Attorney, of Olathe, argued the cause and was on the briefs for appellee.

D. B. Lang, of counsel, Bar Association of Kansas, of Scott City, *James E. Fussell*, of counsel, Leavenworth County Bar Association, of Leavenworth, and *Willard L. Phillips*, *James K. Cubbison*, *Lee E. Weeks*, *Edward M. Boddington, Sr.*, *Charles F. Williams*, *Joseph T. Carey* and *Bernard W. Alden*, all of Kansas City, were on the briefs of the Wyandotte County Bar Association as *amicus curiae*.

George A. Lowe, *Eugene T. Hackler*, *Roy S. Lowe*, *Hugh H. Kreamer* and *James H. Bradley*, of Olathe, and *Bernis G. Terry*, of Mission, were on the briefs of the Johnson County Bar Association as *amicus curiae*.

[fol. 26]

OPINION—Filed December 10, 1960

The opinion of the court was delivered by

FATZER, J.: At issue is the power of the supreme court of Kansas to control and supervise the practice of law before the courts of the state by Kansas licensed attorneys regularly engaged in the practice of law in another state.

The action was one in mandamus to compel the appellee, the probate judge of Johnson County, Kansas, to permit the plaintiff, Keith Martin, to file cases in that court and to appear and try them without the appearance or association of local counsel as required by Rules 41 and 54 of this court, amended December 15, 1958, and to declare those rules unconstitutional and void as contravening the Fourteenth Amendment to the Constitution of the United States. The district court quashed the alternative writ and the plaintiff appealed. The principal question presented was before this court in *Taylor* v. *Taylor*, 185 Kan. 324, 342 P. 2d 190, *certiorari* denied 361 U.S. 374, 4 L. Ed. 2d 380, 80 S. Ct. 401, and was decided adversely to the appellant.

In the interest of brevity Rules 41 and 54, and G.S. 1949, 7-104 therein referred to, are not set forth since the portions here pertinent were quoted at length in *Taylor* v. *Taylor*, supra, pp. 326 and 327, and are incorporated in this opinion by reference. Suffice it to say those rules, as amended, provide in substance that an attorney admitted to the Bar of Kansas who has been admitted to the Bar of another state and who is regularly engaged in the practice of law in that state shall associate local counsel before he can appear in the courts or before boards or commissions of Kansas. While rules of the supreme court form no part of the statutory law of the state, the revisor of statutes publishes them in the general statutes, and the reader may find Rule 41 as G.S. 1959 Supp., 7-122, and Rule 54 as G.S. 1959 Supp., 60-3827.

The petition alleged that the appellant was graduated from the University of Kansas Law School in 1947 and almost immediately thereafter, in August 1947, was duly [fol. 27] licensed to practice law in the state of Missouri, and since that time has regularly practiced law and maintained his office in the Bryant Building, Kansas City, Jackson County, Missouri. On February 12, 1948, he was admitted to practice law before the supreme court of Kansas and all inferior courts, and since April 1948 has continuously maintained an office and his residence in Mission, Johnson County, Kansas.

The appellant alleged he is engaged in the general practice of law and that his clients frequently live in one county and either work or have business connections in another county and state and that their problems involve the laws and procedures of Kansas and Missouri, and that his knowledge of the laws and procedures and his ability to practice in either state have been of assistance to him in obtaining clients and in being able to give them counsel and court representation; that he consults with as many clients in his Kansas office or home as in his Missouri office although most of his office work is performed in his Missouri office; that he has represented the State Highway Commission in litigation in Kansas courts and has tried as many litigated matters in the courts of Kansas as in Missouri; that he has also tried cases in the federal courts of each state

and has argued cases in the appellate courts of each state as well as the United States Circuit Court of Appeals for the Eighth and Tenth Circuits; that since 1951 he has been attorney for the city of Mission and is presently a member of the State Board of Tax Appeals of Kansas; that he wrote an article on Kansas Procedure published in 6 Kansas Law Review, p. 134, and that he has been and is a member of the state and local Bar associations of Kansas and Missouri.

Martin alleged that his net income from the practice of law exceeded $15,000 per year and that approximately one half of that sum has been earned in Kansas and has been so reported on his Kansas state income tax returns; that a large portion of his income is derived from his appearances in the defendant's court which has jurisdiction of adoptions and decedents' estates; that the minimum fee schedules of the Johnson and Wyandotte County Bar As- [fol. 28] sociations require that local counsel be compensated approximately one-third to one-half of the fee for the particular litigation; that prior to the amending of Rules 41 and 54 and the decision in the Taylor case, *supra*, he regularly appeared for clients without the appearance and association of local counsel but that subsequent thereto the defendant has not allowed him to appear and try cases in the probate court of Johnson County unless he has local counsel associated with him, and the defendant has informed him that in the future he cannot appear as attorney for clients without the appearance and association of local counsel as required by Rules 41 and 54.

Martin alleged that Rules 41 and 54 are vague, arbitrary and without standards and have caused his Kansas license to be in fact a nullity as long as he practices law "regularly" in Missouri; that those rules not only deprive him of part of his income from his Kansas practice but also discourage clients from seeking his services; that because he cannot represent them in Kansas courts without the appearance of another lawyer, they have come to believe he cannot counsel them regarding Kansas law or represent them in Kansas courts; that the amended rules place him in the category of a foreign attorney as referred to in G.S. 1949, 7-104, and render his Kansas license inopera-

tive so long as he "regularly" practices in Missouri unless he has another Kansas lawyer associated and appearing with him; that he has continuously listed and maintained telephones in his offices in Kansas and Missouri and his residence, and that since 1948 Kansas lawyers have obtained service of pleadings upon him by mailing them to his Kansas office or residence or have left them at either place.

Martin alleged that the amended rules deny him due process and equal protection of the law in violation of the Fourteenth Amendment of the Constitution of the United States and that unless the defendant allows him to appear in the probate court of Johnson County in all cases now pending and all future cases without the appearance and association of local counsel he will lose clients and a substantial part of his income and will be deprived of the right [fol. 29] to practice his profession in the defendant's court. Further, that his Kansas license granted him the right to appear in the supreme court and in all inferior courts including the court presided over by the defendant.

Martin further alleged that he had no adequate remedy at law, that as a matter of right he was entitled to file cases in the defendant's court and try them without appearance and association of local counsel; that he has suffered and will suffer irreparable injury if the defendant is not compelled to permit him to file and try lawsuits without appearance and association of local counsel. The prayer was that the relief sought be granted and that amended Rules 41 and 54 and G.S. 1949, 7-104 be declared unconstitutional and void.

The defendant, appearing by the county attorney of Johnson County, filed a motion to quash the alternative writ upon the ground that neither the writ nor the petition alleged facts showing that Martin was entitled to the relief sought.

Prior to hearing the matter, the Johnson County Bar Association filed an application to intervene as *amicus curiae* upon the ground that the questions raised were of interest and concern to that association and it was granted leave to file such pleadings as it deemed proper. The committee on Unauthorized Practice of the Law of the Wyandotte County Bar Association made no application

to enter the case as *amicus curiae*, but did appear and offered assistance to the county attorney in the trial of the matter.

The district court sustained the defendant's motion to quash the alternative writ, and Martin duly perfected this appeal.

Before discussing the legal questions here presented it should be noted that during the pendency of this appeal the committee on Unauthorized Practice of the Law of the Wyandotte County Bar Association made application and was granted leave to file its brief as *amicus curiae* in support of the district court's judgment. The Leavenworth County Bar Association and the Bar Association of the [fol. 30] State of Kansas joined in that brief. Likewise, the committee on Unauthorized Practice of the Law of the Johnson County Bar Association asked for and was granted leave to file its brief as *amicus curiae* for the same purpose.

When this case was heard on the merits, the appellant argued that this court does not have power to adopt rules relating to the admission of applicants to the Bar, or to regulate and control the practice of law by attorneys previously admitted, hence, Rules 41 and 54 are ineffective and meaningless. The contention is without merit. The constitution of Kansas distinctly distributes the powers of the government to the executive, legislative and judicial departments. Under Article 3, Section 1 the judicial power is vested in a supreme court, district courts, probate courts, justice of the peace, and such other courts, inferior to the supreme court, as may be provided by law. Under that provision of the constitution, the supreme court stands at the head of the judicial department (*Householder* v. *Morrill*, 55 Kan. 317, 40 P. 664) and is invested with inherent power arising from its creation, or from the fact that it is a court. Inherent power is essential to its being and dignity, and does not require an express grant to confer it (*Petition of Florida State Bar Ass'n*, 40 So. 2d 902). It is not an arbitrary and despotic power to be exercised at the pleasure of the court, or because of passion, prejudice or personal hostility; rather, it is one to be used with moderation and caution in the exercise of sound judicial discretion (7 C.J.S., Attorney and Client, § 18, p. 729).

It is unnecessary here to explore the limits of judicial power conferred by that provision, but suffice it to say the practice of law is so intimately connected and bound up with the exercise of judicial power in the administration of justice that the right to regulate the practice naturally and logically belongs to the judicial department of the government (*In re Integration of Nebraska State Bar Ass'n*, 133 Nebr. 283, 275 N.W. 265, 114 A.L.R. 151). In- [fol. 31] cluded in that power is the supreme court's inherent right to prescribe conditions for admission to the Bar, to define, supervise, regulate and control the practice of law, whether in or out of court, and this is so notwithstanding acts of the legislature in the exercise of its police power to protect the public interest and welfare (*The People* v. *Goodman*, 366 Ill. 346, 8 N.E. 2d 941, 111 A.L.R. 1; *Integration of Bar Case*, 244 Wis. 8, 11 N.W. 2d 604, 151 A.L.R. 586; 5 Am. Jur., Attorneys at Law, § 2). It follows that the power of the supreme court to make reasonable rules for those purposes is not open to question (*Peyton's Appeal*, 12 Kan. 398; *Faelin* v. *Sook*, 30 Kan. 401, 1 P. 123; *In re Smith*, 73 Kan. 743, 85 P. 584; *In re Wilson*, 79 Kan. 450, 100 P. 75; *In re Gorsuch*, 113 Kan. 380, 214 P. 794; *In re Hanson*, 134 Kan. 165, 5 P. 2d 1088; *State, ex rel.*, v. *Perkins*, 138 Kan. 399, 28 P. 2d 765; *Depew* v. *Wichita Association of Credit Men*, 142 Kan. 403, 49 P.2d 1041; *State, ex rel.*, v. *Schmitt*, 174 Kan. 581, 258 P.2d 228; *Taylor* v. *Taylor*, supra).

The appellant next contends that when he was admitted to the Bar of this court in 1948 Rules 41 and 54 did not require him to associate local counsel as a condition to his appearance in courts of the state, and argues that the amendments in December 1958 operate to suspend his right to practice law in Kansas because he regularly practices in another state. He further contends that the court's order admitting him to practice was a final judgment and conditions not a part of that judgment cannot be subsequently imposed. The contentions lack substance. Attorneys at law are a specially qualified class of persons for the purpose of assisting the state and its tribunals to administer justice. While they do not hold an office or public trust in a constitutional or statutory sense, they are, because of their close

intimate relationship to the courts, an important part of the judicial system of the state and are "officers of the court" (*In re Gorsuch*, supra; *In re Hanson*, supra; *State, ex rel.*, v. *Perkins*, supra; *Depew* v. *Wichita Association of Credit Men*, supra). Although G.S. 1949, 7-102 provides who may be admitted to practice in all the courts of the state upon taking the oath prescribed, the statutory regulation [fol. 32] is effective and directory only when it accords with the inherent power of the judiciary because the licensees are officers of the court (*Depew* v. *Wichita Association of Credit Men*, supra, p. 406).

The supreme court's legitimate concern for maintaining high standards for the practice of the law and the administration of justice extends beyond the initial licensing of attorneys. Without the power of supervision and control, the initial examination would afford little, if any, opportunity to determine the continuing qualifications of attorneys practicing before it and the inferior courts of the state, or when the privilege of practicing law has been forfeited. When admitted to the Bar, attorneys at law become amenable to the rules and discipline of the court in all matters of order and procedure and to the supervision and control of the practice of law not in conflict with the constitution. Since the rules in question operate uniformly upon all members of the Bar from the time of their adoption, the appellant, like all other attorneys who become subject to their provisions, was bound to comply with them in his practice of the law in this state. Moreover, no final judgment resulted when he was admitted to the Bar—a license or privilege was merely conferred upon him to engage in the practice of law (*In re Casebier*, 129 Kan. 853, 855, 284 P. 611; *In re Hanson*, supra) for the term of his life or until disbarred by a court of competent jurisdiction (*Hanson* v. *Grattan*, 84 Kan. 843, 115 P. 648). The practice of the law has been defined in *State, ex rel.*, v. *Perkins*, supra, and *Depew* v. *Wichita Association of Credit Men*, supra, p. 408, and both cases recognize that it does not only include appearances in court on litigated matters, but covers services rendered to a client in advising him of his rights. See, also, *State, ex rel.*, v. *Schmitt*, supra, p. 588. Hence the appellant, although he regularly

practices law in Missouri, is not prohibited from practicing law in Kansas by counseling and advising his clients, or preparing documents requiring knowledge of legal principles not possessed by a layman, or of advising the city officials, as city attorney. Neither is he prohibited from practicing before the courts and tribunals of this state whenever he wishes—he has only to comply with the condition imposed of associating with local counsel. In *Taylor* v. [fol. 33] *Taylor*, supra, it was said:

> " . . . Martin's license to practice law before the courts of the state of Kansas has not been in dispute nor has he been disbarred. . . . " (l.c. 328.)

Clearly, Rules 41 and 54 do not revoke or suspend the appellant's license or right to practice law in this state, nor did they change the provisions of the statutory law (G.S. 1949, 7-104); their practical effect was to extend the statute's coverage to include those members of the Kansas Bar who regularly engage in the practice of law in another state.

We now turn to the principal question, whether Rules 41 and 54 violate the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States. The appellant contends that, as applied to him, they lack a rational connection between the grounds for "suspension" of his license and qualifications *essential* to the practice of law, and, between the "suspension" of his license and *any* objective the court might legitimately attain in the exercise of its power to maintain the standards of the Bar, and relies upon *Schware* v. *Board of Bar Examiners*, 353 U.S. 232, 238, 1 L.Ed. 2d 796, 77 S.Ct. 752; *Konigsberg* v. *State Bar*, 353 U.S. 252, 1 L.Ed. 2d 810, 77 S.Ct. 722 and *In re Patterson*, 353 U.S. 952, 1 L.Ed. 2d 906, 77 S.Ct. 869. We are cognizant of what was said and held in those cases, but they do not control the question presented.

When this court adopted the amendments to Rules 41 and 54 it was aware of and took judicial notice of the following: Wyandotte and Johnson Counties in Kansas lie along the state line opposite Jackson County, Missouri, and contain

a combined area approximately equal to that of Jackson County. Wyandotte County ranks second in population in Kansas and Johnson County ranks fourth. Those three counties, Jackson, Wyandotte and Johnson, make up the greater part of one metropolitan area which has a population of about one million. The largest of the downtown [fol. 34] areas of the Kansas Cities is in Missouri where approximately 2100 practicing attorneys maintain their offices. Of that number, an estimated 300 are Kansas licensed attorneys who reside in Kansas but who regularly practice in Missouri. Some of them, however, maintain an individual part-time practice in Johnson and Wyandotte Counties, are listed in the telephone directory, and, like the appellant, have their names on office doors of, and share office space with, accountants, architects, dentists and real estate brokers. There are approximately 200 active resident practicing attorneys maintaining offices in Wyandotte County and approximately 90 active resident practicing attorneys maintaining offices in Johnson County. Thus, the largest number of practicing attorneys—seven to one—are officed on the Missouri side.

On the Kansas side, in the diked bottom land lying along the Kansas and Missouri Rivers, are located the large industrial areas which include all of the large packing plants, stockyards, a Fiberglass industry, an oil refinery, a motor assembly plant, and many other hazardous industries. Accordingly, a greater number of accidents in the workmen's compensation and personal injury field occur in Kansas. Litigation arising from those accidents is controlled by Kansas law and falls within the jurisdiction of the Kansas courts.

In the workmen's compensation field alone the volume of business conducted by the courts and commissions in Wyandotte and Johnson Counties runs on a weekly average of 80 to 100 cases, with approximately 40 to 50 percent represented by Kansas City, Missouri, attorneys having local Kansas counsel associated with them. In addition to workmen's compensation cases, Wyandotte County, with four divisions of its district court at Kansas City, Kansas, had an average case load of 2500 to 2600 civil and 350 to 400 criminal cases per year. Its city court, with two divisions,

had a case load of approximately 3900 civil cases and from 900 to 950 preliminary hearings in criminal cases per year, including misdemeanors. Its probate court had an extremely heavy docket of proceedings relating to decedents' estates as well as many guardianship cases, and it also had [fol. 25] an extensive case load in its juvenile division. The Johnson County District Court, with four divisions at Olathe, had an average case load of approximately 900 to 1000 civil and approximately 100 criminal cases per year. Like Wyandotte County, its probate court had an extensive case load of decedents' estates as well as guardianship proceedings and other matters, and its magistrate court handled in excess of 1000 cases per year.

In the main, that litigation was handled by attorneys falling within four distinct categories: resident Missouri attorneys who associated local Kansas counsel as required by G.S. 1949, 7-104; resident Kansas attorneys maintaining offices in Wyandotte and Johnson Counties; resident Kansas attorneys regularly practicing in Missouri who associated local Kansas counsel, and resident Kansas attorneys who maintained a part-time practice in Kansas but who regularly practiced law and maintained their principal offices in Missouri.

From the totality of the foregoing, Kansas courts and commissions encountered difficulty in procuring the presence of the Kansas licensed attorneys officed in Missouri at the call of the court's and the commission's dockets; in the inability of Kansas officed attorneys to procure service on Missouri officed Kansas attorneys without having to proceed to another state; in the failure of some Kansas licensed attorneys officed in Missouri to answer calls to appear on matters of urgency, and in the failure of those attorneys to familiarize themselves with the rules of local practice and procedure by reason of their infrequent appearance before the courts and tribunals. Altogether too frequently, the courts were faced with the necessity of deciding a case on some technicality caused by the violation of rules established for the practice before the Kansas courts and commissions and because of conflicting statutory provisions between the states of Kansas and Missouri with respect to different periods of general statute limitations

(Missouri Revised Statutes 516.110, § 1, *et seq.*; G.S. 1949, 60-306) and limitations relating to master and servant (see, generally, Missouri Revised Statutes, 287.430; G.S. 1959 Supp., 44-520a).

[fol. 36] In carrying out its duty of supervising the actions of its officers, the supreme court cannot always formulate rules without the possibility, regrettably, that some one of them may work a hardship on some member or group of members of the Bar. The appellant alleges such a hardship, but, as we have seen, the rules in question were directed to serve the public policy of the state in all phases of actions, hearings and proceedings where the applicant or litigant is represented by a Kansas licensed attorney who is regularly engaged in the practice of law in another state. While the police power is generally considered an exclusive power of the legislature, it may, for reasons not necessary to detail here, be exercised by the courts (*Workmen's Compensation Board* v. *Abbott*, 212 Ky. 123, 278 S.W. 533, 47 A.L.R. 789; *Petition of Florida State Bar Ass'n*, 40 So. 2d 902).

It is within the permissible function of the state through the supreme court to classify members of the Bar when a real, logical and substantial basis exists for the classification. The equal protection of the law clause does not restrain the normal exercise of governmental power, but only abuse in the exertion of such authority. That clause is not offended against simply because as the result of the exercise of the power to classify some inequality may be occasioned (*Louisville & Nashville R.R.* v. *Melton*, 218 U.S. 36, 54 L.Ed. 921, 30 S.Ct. 676). There is no precise application of the rule of reasonableness of classification, and the rule of equality permits many practical inequalities. And necessarily so. In a classification for governmental purposes there cannot be an exact exclusion or inclusion of persons and things (*Magoun* v. *Illinois Trust & Savings Bank*, 170 U.S. 283, 294, 42 L.Ed. 1037, 18 S.Ct. 594). A state has a wide range of discretion in distinguishing, selecting and classifying, and it has been held that it was sufficient to satisfy the demand of the Constitution of the United States if a classification was practical and not

palpably arbitrary (*Orient Insurance Company* v. *Daggs*, 172 U.S. 557, 43 L.Ed. 552, 19 S.Ct. 281).

The same is true of the due process clause. The enjoyment [fol. 37] of property is subject to the exercise by the state of the police power, and the question whether what has been done amounts to a taking of property is whether such taking was pursuant to a valid exercise of that power (12 Am. Jur., Constitutional Law, § 652, p. 344), or, as in the instant case, the valid exercise of inherent power of the supreme court to regulate, supervise and control the practice of law before the courts of the state, which is the equivalent of the police power. Regulations are not unconstitutional merely because they operate as a restraint upon private rights of persons or property, or will result in a loss to individuals. The infliction of such loss is not a deprivation of property without due process of law—the exertion of the police power upon objects lying within its scope in a proper and lawful manner is due process of law. Hence, the police power may be exerted as a restraint upon private rights of persons or to regulate the use of property, and where appropriate or necessary, prohibit the use of property for certain purposes in aid of the public safety and general welfare, and constitutional limitations form no impediment to its exercise where the regulation is reasonable and bears a fair relationship to the object sought to be attained (*Schaake* v. *Dolley*, 85 Kan. 598, 118 P. 80, 37 L.R.A. [NS] 877; *Dey* v. *Knights & Ladies of Security*, 113 Kan. 86, 213 P. 1066; *McNaughton* v. *Johnson*, 242 U.S. 344, 61 L.Ed. 352, 37 S.Ct. 178; *State* v. *Mugler*, 29 Kan. 252, 123 U.S. 623, 31 L.Ed. 205, 8 S.Ct. 273; *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U.S. 61, 55 L.Ed. 369, 31 S.Ct. 337; *Armour & Co.* v. *North Dakota*, 240 U.S. 510, 60 L.Ed. 771, 36 S.Ct. 440).

When those general principles are applied to the appellant's argument that the classification made is arbitrary, without standard and unreasonable, we think they are decisive against the contention. The classification encompasses members of the Kansas Bar regularly engaged in the practice of law in another state, and is a natural one. The difference between that group of attorneys, who are required to associate local counsel, and resident members

of the Kansas Bar, who are not so required, rests upon a consideration which is real as distinguished from one which is fanciful, and has a direct and substantial relation to the [fol. 38] object to be attained—the removal of obstacles to a greater public welfare, that is, delays in the orderly administration of justice by Kansas courts and commissions, and, also, to provide litigants in those tribunals with the service of a resident attorney familiar with local rules, procedure and practice and upon whom service may be had in all matters connected with actions or proceedings proper to be served upon an attorney of record.

We think the classification is further justified upon the consideration that in the past decade or so the manner in which law is practiced has tended to swing with emphasis to the specialist. There has developed much new and complex law which has had and will continue to have a profound effect upon the general practice of the law. Those complexities have led to Trial Lawyers versus Office Lawyers; the development of law firms by congregation of specialists; the use of lawyers in trust and title companies, and strong corporate legal departments. Litigation invokes statutory laws, rules of courts, and peculiarities of local practice requiring special knowledge and opinions. Such matters are best handled by a local attorney who constantly deals with problems arising in a variety of situations. Trial work requires immediate decisions—there is little time for reflections and research. Only the lawyer with considerable experience in a particular forum can adequately and consistently render high-level service in the area of local procedure. It is highly desirable that the legal profession recognize those developments, understand them, and adjust as needed so the public will be adequately protected and the profession strengthened and not weakened.

While the appellant alleges a loss of income as a result of the rules and also that they have discouraged clients from seeking his services because they have come to believe he cannot counsel them or represent them in Kansas courts, nonetheless his regular practice of the law in Missouri has placed him within the classification provided and he is in that group by his own selection and volition. He has not [fol. 39] been singled out or made an example of (*Taylor* v.

Taylor, supra, p. 328), nor has he been discriminated against. He is not the only Kansas licensed attorney affected—any member of the Kansas Bar who, like the appellant, regularly engages in the practice of law in another state is bound to comply with the rules. Neither does the fact that his home is in Kansas where he keeps the Kansas reports; that he shares office space with an accountant where he keeps the general statutes of Kansas; that he has attained high scholastic achievements; that he is the author of an article on Kansas procedure, and is a respected member of the Local and State Bar Associations lessen the binding effect of the rules as applied to him. Looking at all the circumstances that attend, we cannot say that the object sought to be accomplished by the rules presents a clear, unmistakable infringement of the appellant's rights secured by the fundamental law (*Murphy* v. *California*, 225 U.S. 623, 56 L.Ed. 1229, 32 S.Ct. 697, 41 L.R.A. [NS] 153).

During the pendency of this appeal the appellant made application to file the same brief as he filed as counsel for the appellant in the Taylor case, *supra*, which was allowed. The same point of law presented in that appeal is presented and reargued here, the only difference being that in the instant appeal the appellant was the plaintiff below. It was held in the Taylor case that he was not denied due process of law or the equal protection of the law, and we reaffirm that holding. This opinion is concluded with the observation there is no substantial and fair ground to say that the rules in question make an unreasonable and unfounded classification thereby denying to the appellant due process of law or the equal protection of the law.

The judgment is affirmed.

[fol. 40] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 42,026

[Title omitted]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed December 31, 1960

1. Notice is hereby given that Keith Martin, the above named appellant, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of Kansas of December 10, 1960, affirming the judgment of the District Court of Johnson County, Kansas, Division 1, of March 4, 1960, dismissing appellant's petition and alternative writ of mandamus.

This appeal is taken pursuant to 28 U.S.C.A. Section 1257 (2).

2. The clerk will prepare transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in such transcript the following:

(a) The abstract of the proceedings in the trial court filed by appellant, Keith Martin.

(b) Motion to stay the judgment of trial court and order of Supreme Court of Kansas denying stay.

(c) Judgment and Opinion of Supreme Court of Kansas of December 10, 1960, affirming judgment of trial court.

(d) Notice of Appeal from Supreme Court of Kansas to Supreme Court of the United States.

3. The following question is presented by this appeal: [fol. 41] Under the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the Constitution of the United States, may an attorney who has been regularly admitted to practice in the state of his residence and who has maintained an office and active practice in that state since the date of his admission be denied, by subsequently promulgated court rules, the right to appear as

counsel in the courts and before commissions and boards of that state unless he associates and has appearing with him "local counsel" as if he were a nonresident, unlicensed attorney, for the sole reason that in addition to his practice and office in the state of his residence he also maintains an office and practice in an adjoining state?

Howard E. Payne, Attorney for Appellant, 122 East Park, Olathe, Kansas.

Affidavit of Service (omitted in printing).

[fol. 43] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 44]

SUPREME COURT OF THE UNITED STATES

No. 635—October Term, 1960

KEITH MARTIN, Appellant,

vs.

JOSEPH S. DAVIS, as Probate Judge of Johnson County, Kansas.

ORDER NOTING PROBABLE JURISDICTION—March 27, 1961

Appeal from the Supreme Court of the State of Kansas.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary calendar.

[fol. 45]

SUPREME COURT OF THE UNITED STATES

No. 635—October Term, 1960

KEITH MARTIN, Appellant,

vs.

JOSEPH S. DAVIS, as Probate Judge of Johnson County, Kansas.

ORDER OF SUBSTITUTION—May 8, 1961

On Consideration of the motion to substitute Herbert Walton in the place of Joseph S. Davis as the party appellee in this case,

It Is Ordered by this Court that the said motion be, and the same is hereby, granted.